

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JAMIE G. BADE,

Plaintiff,

v.

HUNDRED CIRCLE FARM, et al.,

Defendants,

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No. 4:14CV1040 NAB

OPINION, MEMORANDUM AND ORDER

Before the Court is plaintiff's response to the Court's order to show cause why this action should not be dismissed for lack of jurisdiction. Plaintiff has failed to demonstrate that jurisdiction exists. As a result, the Court will dismiss this action under Rule 12(h)(3) of the Federal Rules of Civil Procedure.

Plaintiff alleges that in July 2007 he ordered a meal from McDonald's. He claims there was a puppy's tooth in the fries and that he injured his teeth and mouth when he bit down on it. Named as defendants are Hundred Circle Farm, Con Agra Foods, Inc., Gateway Distribution, McDonald's Corporation, Michael T. Klak, Deborah T. Klak, and McDonald's of Washington.

At the outset of any case, the threshold question for the Court is whether it has jurisdiction to hear it. Title 28 U.S.C. § 1332 gives federal courts jurisdiction over state law claims where the parties are diverse and the amount in controversy exceeds \$75,000.

Plaintiff is a resident of Missouri. Plaintiff alleges that defendants McDonald's Corporation, Michael Klak, and Deborah Klak also reside in Missouri. As a result, the parties are not diverse, and jurisdiction is lacking.

Plaintiff argues that this Court should hear his case because the state court judges in his county eat at McDonalds and may know the local defendants. He says the state judges are likely to recuse themselves on this basis.

Plaintiff's contention is insufficient to overcome the lack of complete diversity. The diversity jurisdiction statute "applies only to cases in which the citizenship of each plaintiff is diverse from the citizenship of each defendant." Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996). Therefore, this action must be dismissed. Fed. R. Civ. P. 12(h)(3).

Accordingly,

IT IS HEREBY ORDERED that this action is **DISMISSED** without prejudice.

Dated this 18th day of June, 2014.

A handwritten signature in cursive script, reading "Henry Edward Autrey", written in dark ink.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE